

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14260 of 2013 (O&M)

Date of decision: 14.05.2015

Madan Gopal

...Petitioner

Versus

Punjab State Power Corporation Ltd., Patiala and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.

Mr. Y.P. Khullar, Advocate for the respondents.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Article 226 of the Constitution of India, the petitioner seeks quashing of the impugned order dated 10.05.2012 (Annexure P-5) and memo dated 10.05.2012 (Annexure P-6), passed by respondent No.2, vide which leave encashment of the petitioner had been declined and recovery of three months salary had been ordered.

It is contended that the petitioner joined the respondents-Department as a driver on 14.01.1980. On 12.12.2011, the petitioner gave three months notice for his premature retirement and subsequently, the petitioner was voluntary retired on 11.03.2012. The learned counsel refers to Annexure P-3, the 'No Due Certificate' dated 01.03.2012 and Annexure P-4, the office order dated 26.03.2012, vide which the payment of leave encashment of 300

days was approved and states that after the approval of payment of leave encashment, the respondent-Department has illegally canceled the order dated 26.03.2012 (Annexure P-4), without any reason. The learned counsel further submits that once the competent authority had accepted the request of voluntary retirement of the petitioner, vide order dated 22.02.2012 (Annexure P-2) and issued the 'No Due Certificate' (Annexure P-3), the impugned order dated 10.05.2012 (Annexure P-5) and memo dated 10.05.2012 (Annexure P-6) could not have been passed.

On the other hand, the learned counsel for the respondents states that the petitioner gave three months notice for premature retirement on 12.12.2011, whereas he was on leave from 08.12.2011, therefore, as per Circular dated 09.01.1975, issued by the Punjab Govt., the premature retirement notice could not have been tendered or accepted as the petitioner was required either to work or to deposit three months salary in lieu of the notice period. The petitioner absented himself from 08.12.2011 to 28.02.2012, whereas the retirement order was issued on 22.02.2012, therefore, the impugned orders were rightly passed by the competent authority.

I have heard the rival contentions of learned counsel for both the parties and have gone through the record carefully.

It is not in dispute that the petitioner was voluntarily retired on 22.02.2012 (Annexure P-2). It is also not in dispute that

respondent No.2, approved the payment of leave encashment of 300 days, vide order dated 26.03.2012 (Annexure P-4) after issuance of 'No Due Certificate' from the Senior Executive Engineer. The respondent No.2, on 10.05.2012, without issuing any notice to the petitioner, canceled the order dated 26.03.2012. No show cause notice was issued to the petitioner before passing of order dated 10.05.2012 (Annexure P-5). Once the petitioner had been voluntarily retired from service by the competent authority after having accepted his application, therefore, the impugned orders being illegal deserved to be quashed. The impugned order dated 10.05.2012 (Annexure P-5) and memo dated 10.05.2012 (Annexure P-6), were passed after the premature retirement of the petitioner. The amount, if paid, in excess, is not on account of any lapse or misrepresentation on the part of the petitioner; it is the department who sanctioned the amount and made the payment on the basis of the record.

Therefore, keeping in view the above, the instant petition is allowed. The impugned order dated 10.05.2012 (Annexure P-5) and memo dated 10.05.2012 (Annexure P-6) are set aside. The respondents are directed to release the payment of leave encashment, and other consequential benefits, if any, within a period of three months from the date of receipt of a certified copy of this order.

14.05.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE